

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
7

8 DWIGHT HANZY,)
9 Plaintiff,) Case No. 2:08-cv-1672-JCM-RJJ
10 vs.)
11 RILEY, et al.,)
12 Defendants.)
13

ORDER

14 Presently before the court is plaintiff Dwight Hanzy's motion for summary judgment (Doc. #31).
15 Defendants Riley et, al. filed an opposition (Doc. #35) and plaintiff filed a response (Doc. #38).

16 Plaintiff filed this matter on June 26, 2009 (Doc. #8). This court dismissed plaintiff's second count
17 which alleged a violation of his Sixth Amendment rights, by order on June 26, 2009 (Doc. #7). Plaintiff
18 was allowed to proceed against defendants on counts one and three. Plaintiff's first count alleges that prison
19 employees retaliated against him, and violated his First Amendment rights, after he filed a grievance
20 relating to an alleged assault by defendants. Plaintiff's third count alleges that his Fourteenth Amendment
21 rights were violated when he was terminated from his prison laundry job.

22 Summary judgment is appropriate when no genuine issues of material fact remain in dispute and
23 the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P 56. However, where reasonable
24 minds could differ on the material facts at issue, summary judgment should not be granted. *Anderson v.*
25 *Liberty Lobby, Inc.* 477 U.S. 242, 251, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

26 With respect to plaintiff's first count, to prove a First Amendment retaliation claim, plaintiff must
27 establish: (1) an assertion that a state actor took some adverse action against an inmate (2) because of (3)
28 that prisoner's protected conduct, and that action (4) chilled the inmate's exercise of his First Amendment
rights, and (5) the action did not reasonably advance a legitimate correctional goal. *Rhodes v. Robinson*,

1 408 F.3d 559, 567-568 (9th Cir. 2005).

2 Here, plaintiff claims that when he was put in “lock-up,” his property was taken from him by prison
 3 staff, and when it was returned to him approximately five days later, “most of his paperwork” had been
 4 stolen (Doc. #31). Plaintiff further alleges that the theft of his paper work was a result of the Nevada
 5 Department of Corrections entire staff conspiring to violate his First Amendment rights. However, plaintiff
 6 does not explain how the alleged theft of his paperwork was an adverse action, by a state actor, made
 7 against him because of his protected conduct, and does not explain how the alleged theft chilled his First
 8 Amendment rights. Plaintiff has failed to address each of the five factors necessary to establish a First
 9 Amendment retaliation claim. Therefore, this court finds that plaintiff is not entitled to summary judgment
 10 with respect to his first count.

11 Plaintiff’s third count alleges that his Fourteenth Amendment rights were violated when he was
 12 terminated from his prison laundry position. (Doc. #8). The requirements of procedural due process apply
 13 only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and
 14 property. *Board of Regents v. Roth*, 408 U.S. 564, 569, 92 S. Ct. 2701, 33 L.Ed.2d 548 (1972). A protected
 15 liberty interest may arise either from the Due Process Clause itself, or from laws of the states. *Kentucky*
 16 *Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). Prisoners do not have a constitutional right
 17 to prison employment and plaintiff has not produced evidence of a state law which creates a liberty interest
 18 in prison employment. *See Rizzo v. Dawson*, 778 F.2d 527, 520 (9th Cir. 1985) and *Toussaint v. McCarthy*,
 19 801 F.2d 1080, 1094-95 (9th Cir. 1986).

20 Therefore, because plaintiff does not have a constitutional right to, nor a state created liberty interest
 21 in prison employment, his claim that defendants violated Fourteenth Amendment rights when they deprived
 22 him of a prison industry work program fails.

23 Finally, plaintiff filed an additional motion for summary judgment (Doc. #37) on June 9, 2010. This
 24 motion is duplicative of Doc. # 31. Plaintiff’s motion makes no new arguments and presents no new
 25 evidence, and is therefore denied.

26 Thus, this court finds plaintiff is not entitled to summary judgment.

27 . . .

28 . . .

1 Accordingly,

2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff's motion for summary
3 judgment (Doc #31) be, and the same hereby is DENIED.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff's motion for summary
5 judgment (Doc. #37) be, and the same hereby is DENIED.

6 DATED this 21st day of July, 2010.

7 
8

9 UNITED STATES DISTRICT JUDGE